cise by the Public Service Commission of its powers is not by way of punishment but rather to enforce a high standard of propriety and professional conduct.

I am of the view that the plaintiff is not entitled to the alternative declaration that he is seeking.

I now come to deal with the plea of *res judicata* raised by the plaintiff. In order to support that plea it is necessary to show that the same issues have been previously adjudicated upon between the same parties suing in the same right. In the present case there is neither identity of parties nor of issues.

Counsel for the plaintiff contends that the parties in the criminal trial and the disciplinary proceedings are exactly the same. He says that the complainant in the criminal case was the Ministry of Education and the said Ministry is again the complainant in the disciplinary proceedings and so he argues the real parties in both the criminal case and the disciplinary proceedings are the Ministry of Education and the plaintiff. With due respect to counsel, there is no substance in this submission.

In the criminal trial it was the Public Prosecutor against the plaintiff. The Public Prosecutor has the control and direction of criminal prosecutions.

The Public Service Commission is constituted under Article 73 of the Constitution of Singapore and one of the duties of the Public Service Commission is to dismiss and exercise disciplinary control over public officers. It is the Public Service Commission which enquires into the conduct of a public officer pursuant to regulations 11 and 4 of the Public Service (Disciplinary Proceedings) Regulations, 1970. The Public Service Commission is under the Constitution of Singapore an independent authority, independent of executive control.

So it is clear that the parties in the two proceedings are different.

The prosecution was to determine whether the plaintiff has committed an offence under section 354 of the Penal Code. The disciplinary inquiry is to determine whether the plaintiff has misconducted himself and is fit to continue to be a teacher. So the issues before the Committee are not the same as the issues in the criminal trial. The acquittal of the plaintiff in the criminal proceedings ascertained no facts. The Magistrate was not prepared to act on the uncorroborated evidence of the girls. In my view there is no *res judicata* to prevent an inquiry into some of the essential facts when those facts are relevant to an accusation of a different character *i.e.* misconduct.

For these reasons the Originating Summons of the plaintiff is dismissed with costs.

Action dismissed.

Solicitors: *David Marshall.*

PUBLIC PROSECUTOR v. NEOH BEAN CHYE & ANOR.

[O.Cr.J. (Choor Singh and D'Cotta JJ.) April 24, 1974; C.C.A. (Wee Chong Jin C.J., Winslow and Tan Ah Tah JJ.) August 5, 1974]

[Singapore — Criminal Case No. 26 of 1972; Criminal Appeal No. 9 of 1973]

Criminal Law and Procedure — Murder — Common intention — Whether necessary to prove a common intention to commit the crime actually committed — Plea of accidental death.

Criminal Law and Procedure — Trial — Joint or separate — Application for separate trial.

Evidence — Statement to magistrate under Criminal Procedure Code, s. 123 — Whether admissible against co-accused — Evidence Act, s. 30 — When copy of cautioned statement by an accused person should be furnished to co-accused — Criminal Procedure Code (Cap. 113), Sch. E, r. 9.

Penal Code, ss. 34 and 302 — Murder — Common intention.

The first accused Neoh, and the second accused Lim, were jointly tried for murder in furtherance of a common intention. Lim carried a loaded revolver and both accused entered a "wine shop" in order to rob the proprietor. When the proprietor was about to close the shop, they attempted to rob him, but when he resisted, Lim shot him and both accused ran out. When Neoh was arrested and charged with the murder of the proprietor, he made a cautioned statement to the police and another statement to a magistrate. When Lim, was arrested and charged some months later, he also made a cautioned statement to the police. The accused were separately represented by counsel at the trial. The second accused Lim contended (a) that a separate trial was desirable as Neoh had blamed him for the proprietor's death in his earlier statements and he would therefore be prejudiced and embarrassed in his defence; (b) that his own statement to a police inspector was inadmissible because Neoh's cautioned statement had not been furnished to him before his own statement was taken from him, but only some time afterwards and accordingly there had been a breach of rule 9 of Schedule E of the Criminal Procedure Code; and (c) that his gun had gone off accidentally during a struggle with the deceased proprietor. The first accused Neoh contended (a) that there was no case to answer at the end of the prosecution case as there was no evidence of a common intention to cause the death of the proprietor; and (b) that the proprietor's death was in any event accidental.

Held: (1) the question of joint or separate trials being left to the discretion of the presiding judges who must consider the interests of justice as well as the interests of the prisoners, a joint trial was appropriate in the circumstances, as the charge was one of murder in furtherance of the common intention of both the accused;

(2) there was no requirement in rule 9 of Schedule E of the Criminal Procedure Code that when two persons are arrested and one makes a statement, the other must be supplied with a copy of the first person's statement before any statement can be taken from him. As a copy of the cautioned statement made by the first accused was in fact served on the second accused, there was accordingly no breach of rule 9;

(3) in a criminal prosecution where section 34 of the Penal Code is involved, it is not incumbent on the prosecution to prove that there existed a common intention to commit the crime actually committed; it is sufficient if it is proved there was a common intention between all the persons who committed the criminal act and that the act which constituted the offence charged was done in furtherance of that common intention;

(4) the evidence was sufficient to establish beyond a reasonable doubt that both accused had a common intention not only to rob the deceased but also to use their gun if any resistance was offered; and that in furtherance of that common intention the second accused deliberately shot the deceased to overcome his resistance, with the intention of causing him bodily injury (the gunshot wound), such injury being sufficient

in the ordinary course of nature to cause death and in fact causing the death of the deceased. As such, the second accused was guilty of murder and by the application of section 34 of the Penal Code, the first accused was also guilty of murder.

On appeal by both accused, the Court of Criminal Appeal upheld the trial judges' decision and dismissed the appeal.

[Editorial Note: The appellants have lodged a notice of appeal to the judicial committee of the Privy Council.]

Cases referred to:-

(1) *Youth* v. *Rex* [1945] W.N. 27.
(2) *R.* v. *Grondkowski* [1946] 1 K.B. 369.
(3) *Bhuboni Sahu* v. *The King* L.R. 76 I.A. 147.
(4) *Rex* v. *Vincent Banka & Anor.* [1936] M.L.J. 66.
(5) *Rex* v. *Chhui Yi* [1963] M.L.J. 177.
(6) *Barendra Kumar Ghosh* v. *Emperor* A.I.R. 1925 P.C. 1.
(7) *Mahboob Shah* v. *Emperor* A.I.R. [1945] P.C. 118.
(8) *Mimi Wong & Anor.* v. *Public Prosecutor* [1972] 2 M.L.J. 75.

COURT OF CRIMINAL APPEAL.

Amarjit Singh for the first appellant.

Michael Hwang for the second appellant.

Glenn J. Knight (Deputy Public Prosecutor) for the respondent.

In the court below the following grounds of decision was delivered:

Choor Singh J.: The abovenamed accused were charged before us as follows: —

"You, Neoh Bean Chye, Lim Kim Huat are charged that you, on or about the 9th day of August 1972 at about 2.30 a.m. at No. 109 Amoy Street, Singapore, in furtherance of the common intention of both of you, committed murder by causing the death of one Chew Liew Tea, and thereby committed an offence punishable under section 302 read with section 34 of the Penal Code (Chapter 103)."

Both accused claimed trial. At the conclusion of their trial they were convicted and sentenced to death. They now appeal against their conviction.

The deceased person mentioned in the charge, Chew Liew Tea, was the proprietor of a public bar or "wine shop" at 109 Amoy Street, Singapore. He lived with his wife and children at 104-B Amoy Street, Singapore, which address is a short distance away from his bar.

On the night of the 8th of August 1972 the deceased was working in his bar at 109 Amoy Street. The two accused went to this bar in order to rob the deceased. The second accused carried a loaded revolver on his person. They entered the bar at about midnight and sat in a cubicle meant for customers who desired some privacy. They ordered and were served with drinks. At about 2 a.m. that night *i.e.* on the morning of the 9th August, when all the other customers had left and the deceased was about to close the bar for the night, they attempted to rob him. In the course of this attempt, the deceased received a gunshot wound on his chest which caused his death. The bullet which caused the gunshot wound was discharged from the gun carried by the second accused. Both accused claimed that the deceased received the fatal gunshot wound in circumstances which did not constitute murder as defined in the Penal Code. They contended that the gunshot wound was caused accidentally.

At the commencement of the trial, counsel for the second accused applied for a separate trial for his client on the ground that in a joint trial with the first accused, his client would be prejudiced and embarrassed in his defence. Counsel submitted that in a cautioned statement made to the police and in a statement made to the Magistrate the first accused had blamed the second accused for the death of the deceased and it was therefore desirable that both accused should be tried separately.

This application for a separate trial was opposed by counsel for the Public Prosecutor who submitted that the prosecution was charging both accused under section 302 read with section 34 of the Penal Code; that the prosecution's case was that the act which caused the death of the deceased was committed in furtherance of the common intention of both accused and that it was therefore appropriate that both accused should be tried together.

The question of separate trials where one accused is likely to lay the blame on the other was considered by the Judicial Committee in *Youth* v. *Rex*,(1) where it said that the question of joint or several trials had always been left to the discretion of the presiding judge. In *R* v. *Grondkowski*,(2) Lord Goddard C.J. in referring to *Youth* v. *Rex* said: —

"... The discretion, no doubt, must be exercised judicially, that is, not capriciously. The judge must consider the interests of justice as well as the interests of the prisoners. It is too often nowadays thought, or seems to be thought, that the interests of justice means only the interests of the prisoners. If once it were taken as settled that every time it appears that one prisoner as part of his defence means to attack another, a separate trial must be ordered, it is obvious there is no room for discretion and a rule of law is substituted for it. ..."

As the charge against both accused was that in furtherance of the common intention of both of them, they committed murder by causing the death of the deceased, we were of the opinion that a joint trial was appropriate in the circumstances of this case. The application for a separate trial for the second accused was therefore rejected.

An autopsy was performed on the body of the deceased by Dr. Chao Tse Cheng who is a forensic consultant pathologist attached to the Department of Pathology, Singapore. He found a bullet entry wound 2.5 cm. from the left nipple. The track was slanting from the left to the right of the deceased's body. Externally the wound measured 1 cm. in diameter with abraided margins. The bullet had travelled inside the body from left to right and in an upwards and inwards direction. It had penetrated the heart through the anterior surface of the right ventricle, come out from the superior vena cava and into the middle lobe of the right lung. There was about a litre of blood and 563 grams of clots in the right chest cavity and a .22 bullet was recovered from amongst the blood clots. There was no exit wound. Dr. Chao certified the cause of death as "haemorrhage from bullet wound in chest".

A specimen of deceased's blood was sent to the Department of Chemistry for examination and on analysis it was found by the chemist that the blood sample contained 230 milligrams ethyl alcohol per 100

millilitres of blood. Dr. Chao explained that this indicated that, speaking generally, a person with that amount of alcohol in his blood would be under the influence of liquor and would probably have a flushed face, red eyes and alcoholic breath. Furthermore, he would probably have poor co-ordination, incoherent speech and an unsteady gait. Dr. Chao agreed that the effect of liquor is different from person to person and even on the same person different from day to day. Dr. Chao agreed further that he had no knowledge of the deceased's drinking capabilities nor his drinking habits and that all he could say was that because of the amount of alcohol found in his blood, at that level he would be under the influence of alcohol in so far as his external appearance was concerned and that he would react a bit more slowly or clumsily to a situation.

As regards the gunshot wound found on the deceased Dr. Chao explained that its external characteristics were important. The wound was one centimeter in diameter and had abraided margins. He estimated the distance from which the gun was fired to be between one and two feet. He stated that the gun was fired from a distance of more than one foot because there was no powder mark nor any hot gas effects that are seen in firing within one foot. On the other hand the distance was not beyond two feet because the wound had an abraided margin which was a mark which is not seen when a gun is fired from a distance of more than two feet. Dr. Chao also noted that the path of the bullet in the body of the deceased indicated that the gun was pointing from the left side of the deceased's body when the bullet was discharged.

The shirt which the deceased was wearing when he received the gunshot wound was sent by the police to the Department of Chemistry for examination. The chemist certified that he found on the front left hand side upper end of the shirt one hole with blackened edges consistent with it being a .22 bullet entry hole. He stated further that he was able to obtain a powder pattern around this hole indicating that the hole had been fired from a distance of less than two feet.

The first accused was apprehended at Butterworth on the 19th September 1972 with the assistance of the Malaysian police and brought to Singapore on the 29th September 1972, under a warrant of arrest issued by a Singapore magistrate.

The second accused was apprehended in Kuala Lumpur with the assistance of the Malaysian police on the 17th February 1973 and brought to Singapore on the 23rd February under a warrant of arrest issued by a Singapore magistrate.

The prosecution proved that when the police arrived at the scene soon after the deceased had been shot, they found on a table in the cubicle which had earlier been occupied by the two accused the following: —

one empty Anchor beer bottle

one empty Tsingtao beer bottle

one empty Green Spot bottle

two Guinness Stout glasses.

These articles were dusted for finger prints. A finger print mark was found on the empty beer bottle. Another finger print mark was found on one of the Guinness stout glasses. After the arrest of the accused, their finger prints were taken by the police and they were compared by a finger print expert, D.S.P. Fernando, with the finger print marks found on the beer bottle and the Guinness stout glass. D.S.P. Fernando gave evidence for the prosecution and expressed the opinion that the finger print mark found on the beer bottle was made by the right fore-finger of Neoh Bean Chye the first accused and that the finger-print mark found on the Guinness stout glass was made by the right middle finger of Lim Kim Huat the second accused. This was not challenged by counsel for the accused.

On the 27th September 1972 the first accused made a statement to a magistrate which reads as follows: —

"I have been charged with murdering someone in a Chinese wine shop. I did not murder him. I went there with a friend with intention of robbing his money. When my friend and I were robbing him I was standing inside the shop near the door. My friend pointed a gun at him and asked him to hand over the money. Then the towkay wanted to catch hold of him. He pushed towkay away and towkay again caught hold of him. After my friend was caught hold of, his gun fired. I ran out of the shop. I did not fire."

Counsel for the first accused did not object to the admission in evidence of this statement. In fact he welcomed its admission and submitted that it was exculpatory in so far as his client was concerned.

Counsel for the second accused objected to the admission in evidence of the said statement. He submitted that it was hearsay evidence against his client and it was therefore inadmissible. Further, that the statement was not a confession by the first accused; that it could not be taken into consideration against the second accused under section 30 of the Evidence Act and that it was therefore inadmissible in evidence and should be kept out altogether. Counsel relied on the following statement in Sarkar on Evidence, 12th edn. at page 329: —

"... Statement of an accused after arrest not amounting to confession is not admissible in evidence against a co-accused either under section 10 or section 30 but only against himself and the judge should warn the jury that it cannot be considered against the co-accused...."

In our judgment the statement made by the first accused to the magistrate was admissible in evidence against him as it contained admissions of facts in issue and of relevant facts. The statement was properly recorded by a magistrate under and in compliance with, the provisions of section 123 of the Criminal Procedure Code and it was not made inadmissible against him by any provision of the Evidence Act or of the Criminal Procedure Code.

The statement could be acted upon as against the first accused and was therefore admissible in evidence.

We were aware that this statement could not be taken into consideration against the second accused unless it amounted to confession by the first accused and even then, being the statement of an accomplice

it had little value unless it was corroborated in material respects so as to implicate the second accused. *Bhuboni Sahu* v. *The King*.[3]

The submission of counsel for the second accused that the said statement should be kept out of the trial altogether was therefore rejected by us.

The second accused after his arrest made a cautioned statement to Inspector Daniel Tan in Singapore on the 23rd February 1973 in answer to a charge of murder. This statement reads as follows: —

"On 9.8.72 at about twelve midnight, Neoh Bean Chye and I went to 109 Amoy Street to have a drink there. When all the customers in the shop had gone, I asked the proprietor to come. I asked him to lend me five thousand dollars. In order to make him believe me, I agreed to hand my pistol to him as a kind of guarantee or trust. As soon as he saw the pistol he grabbed it. I struggled with him to try to take it back from him. In the course of our struggling the pistol fired accidentally. After that my friend Neoh Bean Chye and I ran away. We returned to Victoria Street and left for Malaysia the following morning."

Counsel for the second accused objected to the admission in evidence of this statement on the ground that there was a breach of Rules 6 and 9 of the Rules relating to statements from accused persons prescribed in Schedule E of the Criminal Procedure Code. Rule 6 of the said Rules set out the caution that must be administered to an accused person when he is formally charged and it is in the following words: —

"Do you wish to say anything in answer to the charge. You are not obliged to say anything unless you wish to do so. But whatever you say will be taken down in writing and may be given in evidence."

It was claimed that the interpreter who explained this caution to the second accused did not tell him that he was not obliged to say anything unless he wished to do so.

Rule 9 of the Rules read as follows: —

"When two or more persons are charged with the same offence and statements are taken separately from the persons charged, the police shall not read these statements to the other persons charged, but each of such persons shall be furnished by the police with a copy of such statements and nothing shall be said or done by the police to invite a reply. If the person charged desires to make a statement in reply, the usual caution shall be administered."

It was contended that the cautioned statement taken from the first accused should have been furnished to the second accused before a cautioned statement was taken from him and that as this was not done, there was a breach of Rule 9.

A trial-within-a-trial was held to ascertain whether or not there was any substance in the objections taken by counsel for the second accused. Tan Tiong Fong, the interpreter who assisted Inspector Tan in the recording of the cautioned statement from the second accused gave evidence for the prosecution. He stated that the caution was written down by Inspector Tan and after it had been written down he explained it in the Mandarin language to the second accused who then signed below the last sentence of the caution. Inspector Tan confirmed the evidence of this interpreter that the caution was first written out and then explained to the second accused in Mandarin. Inspector Tan also stated that a copy of the cautioned statement recorded from the first accused was served on the second accused on the 24th April 1973 at the remand prison and that the second accused had acknowledged receipt of it. The receipt (Exhibit P40) was produced in court by Inspector Tan.

The second accused gave evidence on oath. He admitted that the charge of murder was explained to him and then a caution was explained to him. He claimed that the interpreter did not tell him that he need not make a statement if he so wished and that had the Inspector told him so he would not have said anything. Under cross-examination the second accused admitted that the interpreter did say to him, "If you wish to say anything you can do so." He also admitted that he had chosen to speak in Mandarin although he was Hokkien. He admitted further that the statement made by him was read back to him; that he admitted it as true and correct and that he put his signature below the statement.

Having heard Inspector Tan, the interpreter and the second accused we had no doubt at all that the caution required to be administered was correctly explained to the accused and that there was no breach of Rule 6 of the Rules in Schedule E. It was also clear from the evidence of Inspector Tan that a copy of the cautioned statement made by the first accused was in fact served on the second accused and accordingly there was no breach of Rule 9 of the said Rules. We rejected the submission of counsel for the second accused that Rule 9 meant that if two persons are arrested and one makes a statement then before any statement is taken from the second person a copy of the first person's statement must be supplied to the second person. There is no such requirement in Rule 9.

We found that the objections taken by counsel for the second accused against the admission of the cautioned statement of the second accused were groundless and we therefore admitted in evidence the second accused's cautioned statement.

After the arrest of the first accused and as a result of information given by him, the police were on the look-out for one Lee Mong Qoi, otherwise known as "Panjang". The said Lee Mong Qoi learning that the police were looking for him, went and surrendered to the police at the C.I.D. He then took the police to his house and there behind a photograph the police recovered a revolver and five bullets. Lee Mong Qoi stated in evidence that the first accused had offered to sell him this gun for $400 and that he had refused to buy it. He stated further that on his refusal to buy the gun the first accused told him to keep it for him for two weeks and that he would collect it back after that period. He agreed to this and kept the gun and the bullets in his house. He denied under cross-examination that he had in fact bought the gun from the first accused for $295.

The gun and the five bullets recovered from Lee Mong Qoi were sent to the government chemist together with the bullet found in the body of the deceased. The chemist, who gave evidence for the prosecution, carried out firing tests on this gun and he expressed the opinion that the bullet found in the body of the deceased had been fired from this gun. This was not challenged by the defence.

Lee Mong Qoi also stated in evidence that he knew the second accused as Ah Huat; that he first meet him in December 1971 and that they met quite often in 1972. He also knew the first accused as Ah Chye and that he was introduced to him by another person. He stated that on the 9th August 1972 he met both accused at a construction site along Victoria Street at about 6 p.m. The second accused was collecting some clothes at this site and later they went to a coffee stall. At this coffee stall there were four of them *i.e.* the second accused, the first accused, another person whose name he did not know and himself. They were all sitting at a table. He heard the first accused say to the second accused: —

"When you were doing the business I told you not to drink and you drank. The proprietor of the wine shop also drank, so the matter happened."

And also: —

"You spoke to the proprietor in Penang Hokkien which the proprietor did not quite understand. You said to him, Don't come near me or I will splash you!"

The witness explained that "splash you" in Penang Hokkien means "open fire". This witness added that after this conversation between the two accused, the first accused warned him, "Don't let anybody know about this conversation." Then all of them dispersed, each going his own way.

It was put to this witness by counsel for the second accused that his account of what the first accused said to the second accused was not accurate. The witness disagreed with this. It was put to him that he had embellished his recollection of the incident of that day either with words which were never spoken or with his own interpretation of the words used. The witness again disagreed. It was put to him specifically that the first accused never said to the second accused, "You spoke to the proprietor, "don't come near me or I will splash you." ". The witness maintained that these words were said by the first accused to the second accused.

It was put to this witness that if indeed he had overheard the first accused blaming the second accused for having said to the deceased in Penang Hokkien, "Don't come near me or I will splash you" he would have told this to the police and it would have appeared in his statement tendered at the preliminary inquiry before the magistrate and as it does not appear in that statement, he was not speaking the truth. The witness maintained that he did mention it to the inspector who recorded his statement and that he could not explain why it was not in his statement tendered at the preliminary inquiry.

Inspector Daniel Tan stated in his evidence that a very long statement was recorded from this witness; that the statement of this witness tendered before the preliminary inquiry was a statement prepared by him from that long statement; and that the expression "don't come near me or I will splash you" does appear in the long statement.

The only way in which it could have been ascertained whether or not the witness had in fact told the police what he claimed to have overheard was for counsel for the defence to request the court under section 121(2) of the Criminal Procedure Code to look at all the statements made by this witness to the police. Both counsel refrained from making such a request although it was brought to their notice that they could do so if they so wished.

The evidence of Inspector Daniel Tan that the witness had in fact told him what the witness was telling the court and that he had recorded it in a long statement taken from the witness was inadmissible in evidence because the inspector was in effect disclosing the contents of a statement made to a police officer in the course of a police investigation which statement was inadmissible by virtue of the provisions of section 121 of the Criminal Procedure Code. We therefore rejected Inspector Daniel Tan's evidence on this issue.

Under the new procedure laid down by Act 12 of 1972 for the conduct of a magistrate's inquiry preliminary to committal for trial, the evidence before the court consists normally of written statements tendered to the court and the magistrate decides whether or not the statements disclose sufficient evidence to put an accused upon his trial. In this case a statement of the evidence of Lee Mong Qoi, prepared by Inspector Daniel Tan, was tendered before the magistrate. Lee Mong Qoi could not be blamed if the expression "don't come near me or I will splash you" was not in that statement because it was a statement prepared by the inspector and not his evidence given in court in the usual way. The inspector may have for some reason omitted to include it in the statement prepared by him.

Under the circumstances, whether or not Lee Mong Qoi was speaking the truth depended entirely upon his credibility. We were aware that he had confessed to having committed the crime of unlawful possession of a firearm and ammunition which was a very serious offence punishable with ten years imprisonment. We took this into consideration in assessing his credibility and also the fact that he had not yet been prosecuted for that offence.

The only eye-witness to the shooting was Sim Ah Nam a taxi driver who saw only the tail-end of the shooting. His evidence was as follows. On the 9th August 1972 at 1 a.m. he went to the wine shop at 109 Amoy Street to have a drink. He stated that he used to go there almost every night and he knew the proprietor fairly well. When he arrived there at 1 a.m. that night he sat on a stool in front of the counter. The proprietor sat on another stool on the other side of the counter. There were two or three other tables which were occupied. One of the cubicles was also occupied and it was the first cubicle nearest the counter. Two persons were seated in it and he identified the second accused as one of these two persons. He stated that the two persons were sitting on opposite sides of the table and were facing each other. The second accused was facing the front of the shop and he could see him clearly. At about 2 a.m. the proprietor asked him and two other persons sitting at a table to leave. The proprietor told him to leave and come back later so that he could also ask the two persons in the cubicle to leave. He then left the premises. When he left there were only three persons

in the shop *i.e.* the proprietor and the two persons in the cubicle. As he was leaving he saw the proprietor close the collapsible gate and also the wooden swing door. There was a food stall outside the wine shop. He passed the food stall and went across to the other side of the road to ease himself. After doing that he re-crossed the road and came back to the food stall and stood there. He then heard what turned out to be a gun shot. This sound came from inside the shop. He went up to the door of the shop and pushed open the wooden door. He saw two persons, one wearing a blue shirt and crash helmet and the other wearing a yellow shirt. The proprietor was standing facing the person wearing the blue shirt whom he recognised as the second accused who was then holding something in his hand which looked like a gun. The second accused was standing at an angle and not directly opposite the proprietor. On seeing that he ran towards the food stalls on the road shouting "robbery, robbery". Nobody at the food stalls took notice. He ran some distance farther away again shouting "robbery, robbery." As no one would help he ran back to the wine shop and saw the same two persons running out of the wine shop through the front door. He saw one of them opening the door and after they came out they closed the collapsible gate. He again recognised the second accused who was one of the two persons who ran out of the shop. They ran along the five-foot-way and then into a back lane where there was a motor-cycle. He chased them, running along the road and at the same time shouting "robbery, robbery". He then heard a gun shot being fired. He could not say whether it was fired at him or fired into the air, because it was dark. On hearing the gun shot he stopped. He heard the noise of a motor-cycle being driven away. He saw the two persons ride away on the motor-cycle. He then went back to the wine shop and stood in front of the collapsible gate. He saw the proprietor lying on the floor near the counter. The proprietor's wife and son arrived at the shop. They could not get in because the front collapsible gate was closed. They entered the shop by the back door and he followed them. Someone sent for the ambulance and he assisted in carrying the proprietor into the ambulance. He stayed on until Inspector Daniel Tan arrived at the scene.

On the 24th February 1973 at 1.40 p.m. Sim Ah Nam attended an identification parade held at the C.I.D. by Inspector Daniel Tan. There were 10 persons in the parade. Sim Ah Nam identified the second accused in the parade as the person he saw that night in the wine shop immediately after the shooting facing the proprietor and holding something which looked like a gun.

At the close of the case for the prosecution, counsel for the first accused submitted that his client had no case to answer on the charge of murder. He argued that there was no evidence of a common intention to cause the death of the deceased; that his client was not a party to the killing of the deceased and that in any event the death of the deceased had been caused accidentally in the course of the attempt to rob. Counsel for the first accused cited *Rex* v. *Vincent Banka & anor.*[4] in support of his submission that the first accused could not be convicted of murder unless the prosecution proved that there was a common intention on the part of both accused to commit murder. The head note of the report of this case reads as follows: —

"Before the jury can find an accused person guilty of murder by reason of the provisions of section 34 of the Penal Code, they must be satisfied on the evidence that there existed between the participants a common intention not only to rob but also to kill the deceased. The trial judge should direct the jury to this effect."

This head note is based on the following passage in the judgment of Huggard C.J. at page 69: —

"It follows that it is the duty of the trial judge, in cases where section 34 of the Penal Code is relied on, to direct the attention of the jury to any evidence from which they may letitimately infer the existence of a common intention to commit the criminal act actually committed; at the same time making it clear that the question whether or not such common intention existed is a question of fact and is for them to determine."

and also at page 70: —

"under the terms of that section (section 34 of the Penal Code) as has already been pointed out, there must exist a common intention to commit the crime actually committed, and it is not sufficient that there should be merely a common intention to "behave criminally."

Banka's case is a decision of the Court of Criminal Appeal of the Straits Settlements and it was referred to again by that court in *Rex* v. *Chhui Yi,*[5] when Whitley Ag. C.J. referred to the last cited passage from the judgment in *Banka's* case and said, at page 180: —

"... That does not, of course, mean that, in the case of murder, there need have been a common intention actually to kill but there must have been a common intention to do any of the acts which are described in sections 299 and 300 of the Penal Code and the doing of which, if death results, amounts to murder."

In our judgment the head note of the report of the decision in *Rex* v. *Vincent Banka and another* does not contain a correct statement of the law. In a criminal prosecution where section 34 of the Penal Code is invoked, it is not incumbent on the prosecution to prove that there existed between the participants a common intention to commit the crime actually committed. For section 34 to apply it is sufficient if the prosecution prove that there was in existence a common intention between all the persons who committed the criminal act and that the act which constituted the offence charged was done in furtherance of that common intention. This is clear from the decisions of the Privy Council in *Barendra Kumar Ghosh* v. *Emperor,*[6] and *Mahboob Shah* v. *Emperor,*[7] and also from the recent decision of the Court of Criminal Appeal of Singapore in *Mimi Wong and another* v. *Public Prosecutor.*[8]

In *Mimi Wong's* case, Wee Chong Jin C.J. who delivered the judgment of the court, explained the effect of section 34 of the Penal Code in the following words, at page 78: —

"There is no doubt that for this section to apply there must be in existence a common intention between all the persons who committed the criminal act, and that a criminal act be done in furtherance of that common intention. When these two requirements are proved, each of such persons would be liable for the entire criminal act in the same manner as if he had done it alone."

xxx xxx xxx

"... If the nature of the offence depends on a particular intention the intention of the actual doer of the criminal act has to be considered. What this intention is will decide the offence committed by him and then section 34 applies to make the others vicariously or collectively liable for the same offence. The intention that is an ingredient of the offences constituted by the criminal act is the intention of the actual doer and must be distinguished from the common intention of the doer and his confederates. It may be identical with the common intention or it may not. Where it is not identical with the common intention, it must nevertheless be consistent with the carrying out of the common intention, otherwise the criminal act done by the actual doer would not be in furtherance of the common intention...."

His lordship gave the following illustration, at page 79:—

"Thus if A and B form a common intention to cause injury to C with a knife and A holds C while B stabs C deliberately in the region of the heart and the stab wound is sufficient in the ordinary course of nature to cause death, B is clearly guilty of murder. Applying section 34 it is also clear that B's act in stabbing C is in furtherance of the common intention to cause injury to C with a knife because B's act is clearly consistent with the carrying out of the common intention and as their "criminal act", i.e. that unity of criminal behaviour, resulted in the criminal offence of murder punishable under section 302, A is also guilty of murder."

In our judgment section 34 of the Penal Code was wrongly construed in *Vincent Banka's* case and that case was of no assistance to the first accused.

The submission of counsel for the first accused that the deceased received the gunshot wound accidentally during a struggle with the second accused was supported by counsel for the second accused. He submitted that the only evidence before the court as to the circumstances under which the gun went off was the statement made by the first accused to the magistrate and the cautioned statement of the second accused made to Inspector Daniel Tan that if the court believed those statements to be true then the court must accept them in toto and that as both statements disclosed that the deceased was accidentally shot, both accused had no case to answer on the charge of murder.

We rejected the submission that the deceased was shot accidentally. Quite apart from the statement of the first accused made to the magistrate and the cautioned statement of the second accused made to Inspector Daniel Tan, it was clear from the evidence of Sim Ah Num that the second accused was holding the gun when it was discharged into the chest of the deceased. Sim Ah Num rushed to the door of the wine shop on hearing the gunshot and he saw the second accused facing the deceased and holding something in his hand which looked like a gun and which was pointed at the deceased. The deceased's hands were by his side and he was a short distance away from the second accused. And Lee Mong Qoi overheard the first accused scolding the second accused on the very day of the incident for having said to the deceased in Penang Hokkien, "Don't come near me or I will splash you." This was not hearsay evidence. The second accused was present and the words were directed to him and he made no reply. If Lee Mong Qoi was speaking the truth, the second accused's silence meant that he admitted that he had in fact told the deceased in Penang Hokkien what amounted to "Don't come near me or I will shoot you". It follows that if the second accused had in fact uttered words to this effect to the deceased when he was approaching him, the gun was discharged deliberately and not accidentally.

We were aware that Lee Mong Qoi was not a person with an unblemished character. He had confessed to the crime of keeping in his possession an offensive weapon in contravention of section 3 of Chapter 100. He was therefore a person whose evidence should be treated with suspicion and scrutinised with great care. Although he was not an accomplice in the crime with which the two accused were charged, his evidence merited the same consideration as that of an accomplice. We had in mind that in the absence of corroboration it would be dangerous to act on his evidence and we knew that there was no corroboration of his evidence. We observed his demeanour in the witness box and the manner in which he answered questions put to him in cross-examination. He impressed us as a truthful witness. In our opinion by no stretch of imagination could he have invented the story of the first accused scolding the second accused for saying to the deceased in Penang Hokkien, "Don't come near me or I will splash you." In our judgment Lee was speaking the truth and we therefore rejected the suggestion that he had embellished his evidence in the hope that he would find favour with the police because he had not yet been prosecuted. We were convinced that he was speaking the truth. We therefore decided to accept his evidence as true and act on it, knowing very well that it was uncorroborated.

In our judgment, the evidence at the close of the prosecution's case clearly showed that the deceased was deliberately shot by the second accused and not accidentally shot as claimed by the defence.

We were satisfied beyond reasonable doubt that the shot deliberately fired by the second accused at close range into the deceased's body was fired with the intention of inflicting such bodily injury as would in the ordinary course of nature cause death. We did however consider the other possible view that the gun was fired "with the intention of causing bodily injury as is likely to cause death." We rejected this view because the facts were against it. The gun was a lethal weapon. It was fired from very close range and it was fired into the chest of the deceased. All this indicated the higher degree of certainty required under the third limb of section 300 when contrasted with the word "likely" used in section 299 of the Penal Code.

The evidence showed that the second accused shot the deceased with the intention to cause bodily injury and the bodily injury intended to be caused was the gunshot wound found on the chest of the deceased. As this gunshot wound was sufficient in the ordinary course of nature to cause death and did cause the death of the deceased, the second accused was *prima facie* guilty of murder.

We next considered whether or not there was any common intention between the two accused. The robbery was a well-planned operation. They went there on a motor-cycle which they left in the back lane before entering the wine shop. They sat in a cubicle and abided their time. It is unthinkable that persons go-

ing to commit robbery in a public bar would give no thought at all to the weapon or weapons they must carry to intimidate or if necessary overpower their victim or to deal with people obstructing their escape. The two accused must have discussed all these matters before embarking upon such a dangerous operation and that is why the second accused carried a loaded revolver. Consequently it was a logical inference that there was between them a common intention of not only to rob the deceased but also to use the lethal weapon which the second accused carried. Had the gun been unserviceable or unloaded then it might have been suggested that there was no intention to use the gun and no common intention to rely on it. The shooting of the deceased when he resisted and the firing of the gun again when the two accused made their escape was concrete proof of their common intention to use the lethal weapon. It was also proof of their deadly intent. They meant business. In the light of all these facts, we had no doubt at all that there was between them a common intention to rob the deceased, to use the deadly weapon to intimidate him, and if necessary, to fire it to overpower him, and to effect their escape.

The deliberate firing of the gun by the second accused, which caused the death of the deceased was an act done in furtherance of the said common intention. As the gun was fired with the intention to cause bodily injury and the bodily injury intended to be caused was the fatal gunshot wound which was sufficient in the ordinary course of nature to cause death, the first accused was also, *prima facie*, guilty of murder by the application of section 34 of the Penal Code as expounded by the Court of Criminal Appeal in *Mimi Wong* v. *Public Prosecutor, supra.*

After a careful review of all the evidence before the court at the close of the prosecution case, we were of the view that the prosecution had established a *prima facie* case against both accused, which if unrebutted would have warranted their conviction on the charge of murder. We therefore called upon both accused to enter upon their defence.

The first accused elected to give evidence on oath. He stated that the second accused came to Penang to fetch him and that they both left for Singapore seven or eight days before the robbery. He admitted categorically that they set out for Singapore to commit robbery. He admitted that he brought along his gun with seven bullets and that it was the gun used later in the robbery. When they reached Johor Bahru he handed the gun to the second accused and asked him to take it to Singapore.

On the night in question *i.e.* 8th August 1972 he and the second accused set out for the wine shop where the robbery was to be committed. They arrived there between 11 and 12 at night. They sat in a cubicle. The second accused ordered two bottles of beer while he ordered an aerated water bottle. They had their drinks. When it was past 2 a.m. he saw that there was no one around. The second accused paid for the drinks. When the deceased was making the change the second accused took out the gun and pointed it at him. The deceased asked him, "What do you want to do?" The second accused replied, "Don't make any noise, I want your money." Then the deceased held the hand of the second accused which was holding the gun. The second accused pushed him three or four feet away. After pushing him away the second accused stepped backwards and said, "I want your money. I don't want your life." His evidence as to what happened after that is best told in his own words:

> "I am quite certain he said that. The proprietor chased up and held my friend again. My friend was holding the gun in his right hand. When the proprietor came near, again he held the same hand. They were pulling backwards and forwards. The proprietor used both hands to hold my friend's hand. I am not sure if the proprietor held the hand or the gun of my friend. I could not see clearly. When they were in this position of pushing backwards and forwards my friend pushed the proprietor (witness demonstrates with left hand). Then there was the sound of the gun. Deceased's hands were by his side. After he pushed the proprietor — then the sound of the gun — then the proprietor was standing upright with his hands on the side of his body. I was looking at them all the time. When I heard the sound of the gun the proprietor was between one and two feet away from my friend. After the proprietor was pushed away, they separated. Then I heard sound of gun. When I heard the sound, the proprietor was standing like this (upright with hands by the side of his body). He was standing there stupified. So was my friend the second accused. I opened the door and went out."

The first accused stated that he opened the door and ran away. He did not expect what had happened. According to him the whole incident lasted about one minute. When he left, the second accused followed him. He was half walking and half running along the five foot way. The second accused was following him. In the backlane there was a motor-cycle on which they had arrived earlier. When the second accused reached him he took over the gun from the second accused. The second accused went astride the motor-cycle and he sat pillion. He heard someone shouting "robbery, robbery". He fired a shot in the air because the voice was very loud and he thought there was a big crowd. He fired the shot in order to scare them away.

The first accused admitted that when they went to rob he knew that the second accused had a loaded gun. He admitted that he had loaded the gun earlier. According to him the gun was taken to threaten the deceased and also to fire it into the air to scare away the pursuers.

The first accused admitted that on the evening of the 9th August 1972, the second accused, Lee Mong Qoi and another man whose man he did not know, met at a coffee stall. He admitted that he was annoyed with the second accused and scolded him. He admitted telling the second accused on that evening, "I have told you when you want to do the work you should not drink liquor or wine. You keep on drinking. You drank and the matter was spoilt." He stated that by "spoilt" he meant that something which should not have happened had happened. He denied scolding the second accused for having said to the deceased in Penang Hokkien, "Don't come near me or I will splash you." He stated that they went to the wine shop to rob and not to kill and that he had no knowledge that his friend would use the gun to kill if there was resistance.

The first accused stated that on the 15th August 1972 he met Lee Mong Qoi at a coffee stall. He told Lee that he had a gun for sale and he asked $300 for

it. Lee said that he would look for someone to buy it. The next day Lee came back and told him that no one wanted to buy it. He told Lee that he was in difficulty and had no money to go back to Penang. He asked Lee to do his best to dispose off the gun for him. Lee said, "It is difficult to find a buyer at short notice. I will take it away from you first." This meant that he was buying it. Lee paid him $295 and he handed the gun to Lee.

This was his evidence-in-chief on the first day when he commenced his evidence. On the next day, under cross-examination by counsel for the second accused, he gave a completely different version of the incident. He was asked,

Q. Yesterday you told us that you were watching the deceased and second accused all the time?

A. Yes.

Q. So if you were watching them all the time, why can't you tell us how the gun went off?

A. I saw the deceased pulling and pushing with him.

Q. Are you saying that the gun fired because the second accused pulled the trigger?

A. I don't know.

Q. Yesterday you said that after second accused had pushed deceased away the gun fired?

A. I did not say that after he pushed the deceased away the gun sounded.

Q. So what did you say?

A. I said the first time the deceased came to grab his gun he pushed him and second accused stepped backwards. The second accused said, "I want your money not your life." After second accused said this, the deceased came up to hold his hand or his gun. I did not see clearly. When he was pulling, second accused pushed him and the gun sounded. (witness demonstrates pushing action with left hand).

Q. Are you saying that the gun sounded as the second accused was pulling the proprietor?

A. Yes.

Q. Yesterday did you say that when the deceased and second accused were separated you heard the gun sound?

A. No.

Q. Do you remember saying yesterday that the proprietor had his hands by his side when the gun was fired?

A. I said that after the gun had sounded the proprietor's hands were by his side.

It will be seen that this is a completely different version from the version he had given the day before. Under cross-examination by the Deputy Public Prosecutor when asked to explain the contradiction between the two versions the first accused denied having given the first version to the court. He denied having told the court the day before that the gun sounded after the second accused had pushed away the deceased.

The first accused admitted that if the deceased had not resisted he would have jumped over the counter and taken the money from the drawer of the counter. He explained that he did not do that because after the gun had sounded, someone pushed open the door and poked his head in to see what was happening.

The first accused admitted that when the deceased resisted he did not intervene because he thought the second accused was capable of handling the matter.

The second accused elected to give evidence on oath. He stated that he went to Penang to fetch the first accused. He admitted that he brought the first accused to Singapore to commit robbery. He admitted that they had discussed and planned the robbery.

On the 8th August 1972 in the evening he went with the first accused to the wine shop. When they entered the shop he was carrying the gun on him. The first accused had given the gun to him earlier that evening. He did not know that the gun was loaded. He tucked it in his waist. After they entered the wine shop they sat in the first cubicle. He was sitting facing the front of the shop. They remained in the cubicle for more than two hours. He observed that the deceased was drinking liquor. After all the customers had left, the deceased walked up to their table and he paid him their bill. After he had given deceased the money for the bill, the deceased walked away and he followed him. As to what happened after that it is best told in his own words:

"The proprietor then gave me back the change. I took the money and placed it in my shirt pocket. I then pulled out the gun and pointed it at the proprietor and said, 'Don't make any noise! I want your money.' He asked me, 'What do you want?' He then rushed forward at me. He wanted to catch hold of my hand. He tried to catch hold of my hand which held the gun. When he did this I pushed him away. (witness demonstrates — pushing with left hand). After I pushed him I retreated two steps. I then told him, 'I want your money, not your life.' I took two steps back so as to lengthen the distance between us — so that he won't be close to me. He again rushed at me. This second time when he rushed at me he held my hands as well as the gun. He was using both his hands. After he caught hold of me, we had a struggle for the gun. As I was pushing the proprietor with my left hand, the gun went off.

I am not sure whether he was holding my right hand or the gun. I was trying to push him away with my left hand and the gun went off.

When the proprietor caught hold of my hand or the gun, both of us were trying to pull each other. I don't know what the proprietor was trying to do. I was trying to push him away from me.

I do not know why the gun went off. I did intend to fire the gun in that struggle.

After the gun went off the proprietor stood still with his hands by his side."

The second accused admitted that on the 9th August 1972 in the evening, he was at a coffee stall with the first accused, Lee Mong Qoi and another person named Hock Choo. He admitted that the first accused said certain things to him and that he did not reply because he was not in a very good mood. He

said that he could not remember what the first accused said to him and in particular he did not remember the first accused saying to him "you told the proprietor 'don't come near me or I will splash you'."

The second accused called Lt. Col. Peter Low of the Singapore Armed Forces to testify on the condition of the gun used in the robbery. All that this witness could tell the court was that the gun did not have a safety catch and that there was no mechanical reason why it could not be discharged accidentally.

We rejected the evidence of the second accused that he did not know that the gun was loaded. He admitted in cross-examination that he "guessed" it was loaded. In our opinion he knew very well that the gun was loaded. We also rejected his evidence that he did not know how the gun was fired. He did not impress us as a truthful witness. In our opinion he was not speaking the truth when he stated that the gun went off accidentally during a struggle with the deceased. We therefore rejected his claim that the deceased was shot accidentally.

The evidence given for the defence did not raise any doubt in our minds as to the guilt of both accused. In fact the evidence for the defence strengthened the case for the prosecution because the second accused admitted that there was a pre-arranged plan that the second accused would threaten the deceased with the gun and hold him up while the first accused would jump over the counter and remove the money from the drawer. It is quite plain therefore that when the deceased resisted, he was shot to allow the first accused to carry out the plan. It was also clear that the first accused did not help himself to the money because immediately after the shot was fired, Sim pushed open the door and looked in to see what was happening. This alarmed both accused and they panicked and ran away.

Furthermore, the first accused admitted quite categorically, on the first day when he gave evidence, that the shot was fired when the second accused and the deceased had separated and the deceased was standing with his hands by his side. When the first accused stated this, his counsel intervened and sought to suggest that the first accused did not say that the shot was fired after the separation. To clarify the matter the first accused was asked to demonstrate with the help of the interpreter and a police officer. The first accused then demonstrated and clearly satisfied the court that the deceased's hands were at his side when the gun was fired. That version appeared to us to be the true version and having considered it in the light of all the other evidence before us, we accepted it as the truth of the matter. We were aware that the first accused had retracted that version the next day. We were also aware that in so far as the second accused was concerned, this was the version of an accomplice and if used against the second accused it had little value unless it was corroborated by some other independent evidence. As no one else was present at the shooting, there was no evidence of an eye-witness to corroborate it. We tested this evidence in the light of the remaining evidence in the case. It had a ring of truth in it. For example the evidence of Lee Mong Qoi that he overheard the first accused scolding the second accused for saying to the deceased, "Don't come near me or I will splash you" tended to confirm the first accused's version that the gun was fired when the deceased's hands were by his side. Although there was no independent evidence to corroborate this version and although we were aware that it was dangerous to act on such evidence which was the evidence of an accomplice and had been retracted, we decided to accept it and act on it because we were convinced that it was the truth of the matter.

After a careful review of the evidence, both for the prosecution and for the defence, we were satisfied beyond a reasonable doubt that the second accused deliberately shot the deceased to overcome his resistance and also to prevent him from getting his gun and that this was done in furtherance of the common intention of both accused.

We were satisfied beyond a reasonable doubt that the two accused went to the deceased's wine shop on the night in question in order to rob him; that the second accused was armed with a loaded gun; that both accused knew that the gun was loaded; that they had a common intention of not only to rob the deceased but also to fire the gun if any resistance was offered; that in furtherance of that common intention the second accused deliberately shot the deceased to overcome his resistance; that the second accused shot the deceased with the intention of causing bodily injury; that the bodily injury intended to be caused was the gunshot wound found on the chest of the deceased; that the said gunshot wound was sufficient in the ordinary course of nature to cause death and did cause the death of the deceased; that by causing the death of the deceased the second accused committed the offence of murder punishable under section 302 of the Penal Code and that by the application of section 34 of the Penal Code, the first accused was also guilty of murder.

Both accused were therefore convicted under section 302 read with section 34 of the Penal Code and sentence of death was passed on them.

The accused appealed to the Court of Criminal Appeal. The learned Chief Justice in delivering the judgment of the Court dealt with the facts and continued:

Wee Chong Jin C.J. (after dealing with the facts, continued): Several grounds of appeal were raised and argued by counsel on behalf of the appellants. It is convenient to consider, first, the grounds relied on by the second appellant. His counsel submits that the trial judges erred in refusing an application for a separate trial thereby enabling the evidence of Lee Mong Qoi to be admitted in evidence at the joint trial. The short answer to this submission is that Lee Mong Qoi's evidence would be clearly relevant and admissible evidence at a separate trial of the second appellant. Other submissions on behalf of the second appellant relate to the weight and reliability of Lee Mong Qoi's evidence. These are matters entirely within the province of the trial judges and it is clear from their Grounds of Decision that their acceptance of Lee Mong Qoi as a truthful witness was not based on any mis-

apprehension of the evidence or of the law. The rest of the submissions urged on behalf of the second appellant relate to his defence that the firing of the gun was accidental and occurred when the deceased was holding his hand during a struggle. There was overwhelming evidence to support the trial judges' finding that it was a deliberate act on his part and in our opinion, once the trial judges rejected his defence, there was on all the evidence before them, no other possible verdict against him except that of guilty of the offence of murder.

With regard to the first appellant many grounds of appeal were raised but during the hearing of the appeal all except the question of common intention were either abandoned or were plainly admitted to be without any substance. On the question of common intention, it is submitted that as there was no "tangible proof" to establish a common intention shared by the appellants to use the gun if necessary to overcome any resistance by the proprietor, the trial judges were wrong in inferring a common intention to use the gun if any resistance was put up by the proprietor during the course of the robbery. We reject this submission. The facts speak plainly for themselves. The gun belonged to the first appellant. He brought it with him to Singapore for the purpose of committing robbery. He loaded it and handed it to the second appellant before they entered the "wine shop" which they had planned to rob on the night in question. It was planned that the proprietor would be held up at gun point by the second appellant in order to carry out the robbery. They waited until the coast was clear and in his presence the second appellant pointed the gun at the proprietor. The proprietor was deliberately shot when he offered resistance during the robbery.

In our judgment, on all these facts, the trial judges were plainly justified in finding the first appellant guilty of the offence of murder under section 302 read with section 34 of the Penal Code which provides that "when a criminal act is done by several persons, in furtherance of the common intention of all, each of such persons is liable for that act in the same manner as if the act were done by him alone".

The appeals are accordingly dismissed.

Appeals dismissed.

Solicitors: *David Marshall; Allen & Gledhill.*

TAN KOK TECK v. LIM SIAN NGO

[C.A. (Wee Chong Jin C.J., Winslow and Kulasekaram JJ.) October 31, 1974]

[Singapore — Civil Appeal No. 14 of 1974]

Family Law — Nullity of marriage — Petition for — Respondent aged 15 years 5 months at time of marriage — Marriage according to Chinese customary rights — Whether void under Women's Charter (Cap. 47), ss. 9 and 20.

This was an appeal from the decision of the High Court ([1974] 2 M.L.J. 9). The parties were married according to Chinese customary rites on 13th December 1966, when the respondent was aged 15 years 5 months.

The petitioner sought to have the marriage declared null and void under section 9 of the Women's Charter on the ground that at the date of marriage the respondent was under the age of 18 years and the marriage was not authorised by licence of the Minister as provided under section 20 of the Women's Charter. Choor Singh J. held that section 9 of the Women's Charter (in its unamended form) did not apply to Chinese marriages and therefore the marriage was valid. On appeal to the Court of Appeal,

Held: Chinese customary marriages belonged to a special class of marriages which were not within the contemplation of the Women's Charter as marriages which had to be solemnized under Part III thereof before its amendment in 1967 and therefore the learned trial judge was correct in holding that section 9 of the Women's Charter did not apply to Chinese customary marriages and that the marriage in this case was valid.

Case referred to:-

(1) *Re Loh Toh Met decd.* [1961] M.L.J. 234 @ 248.

COURT OF APPEAL.

N. C. Goho for the appellant.

K. S. Rajah (Director of Legal Aid) for the respondent.

Winslow J. (delivering the judgment of the Court): At the conclusion of the hearing of this appeal on 5th August, 1974 which we then dismissed we stated that we would give our reasons in writing at a later date.

This appeal was against the dismissal by the High Court of a petition for nullity of marriage by the appellant on the ground that his marriage to the respondent in Singapore, according to Chinese customary rites, on 13th December 1966 was invalid under section 9 of the Women's Charter (Cap. 47) because she was, at that date, under the age of 18 years of age, such marriage not having been authorised by licence granted by the Minister under section 20 thereof.

Section 9 of the Women's Charter, before its amendment by Act No. 9 of 1967 which became effective on 3rd June 1967 was as follows: —

"9. Any marriage purported to be solemnized under this Part of the Ordinance shall be invalid if at the date of the marriage either party is under the age of eighteen years unless the solemnization of such marriage was authorized by a licence granted by the Minister under the provisions of section 20 of this Ordinance."

It is pertinent to observe that this section, as it then was, refers to invalidity of a marriage solemnized under Part III in cases where *either* party was under the age of eighteen years. At the date of the marriage in 1966 the respondent, as stated in the petition, was 15 years and 5 months of age and it was not in issue that she was the only party to the alleged marriage who was under the age of 18 years. We were accordingly not concerned with any complaint about the petitioner's